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8 UNITED STATES DISTRICT COURT
9 WESTERN DISTRICT OF WASHINGTON
10 AT TACOMA

11 CHARLES V. FARNSWORTH,

12 Petitioner,

13 v.

14 JERI BOE,

15 Respondent.

16 CASE NO. 3:20-cv-05067-BHS-JRC

17 ORDER TO FILE SECOND
18 AMENDED PETITION AND
19 DENYING MOTION TO STRIKE

20 This matter is before the Court on plaintiff's amended petition for writ of habeas corpus
21 and respondent's answer to the amended petition. *See* Dkts. 51, 58.

22 In January 2020, petitioner, who is *pro se*, filed his habeas petition in this matter. *See*
23 Dkt. 1. The Court directed service of the petition. Dkt. 7.

24 Then, in August 2020, petitioner initiated a separate case in this Court, filing a different
25 petition challenging the same conviction, under a different cause number. *See* Dkt. 36. In
26 November 2020 (*see* Dkt. 51), District Court Judge John C. Coughenour adopted the
27 undersigned's report and recommendation and directed the Clerk's Office to file the second
28 amended petition. *See* Dkt. 58.

1 habeas petition under this cause number as petitioner's amended habeas petition. *See* Dkt. 36.
 2 The Court did this pursuant to the rule that where a second habeas petition is filed while an
 3 earlier habeas petition pertaining to the same state court proceeding is still pending, the district
 4 court should construe the second petition as a motion to amend the earlier-filed petition and
 5 because petitioner was still entitled to amend his petition in this proceeding without leave of
 6 court. *See* Dkt. 36, at 2.

7 In the meantime, respondent had already filed the answer to petitioner's first habeas
 8 petition in this matter. Dkt. 45. Therefore, the Court also ordered respondent to file an amended
 9 answer pertaining to the amended habeas petition. *See* Dkt. 52. Respondent filed the amended
 10 answer (Dkt. 58), and petitioner filed his response. Dkt. 62.

11 Upon review of petitioner's response to the answer, however, it appears that petitioner
 12 has incorporated his arguments related to both his original petition and his amended petition. *See*
 13 Dkt. 62. This is improper. It is well-settled that where an amended habeas petition is filed, it
 14 completely replaces the original habeas petition. *E.g., Daniels v. Felker*, No. 1:08-CV-01590
 15 AWI MJS HC., 2010 WL 2867369, at *3 (E.D. Cal. 2010) (amended habeas petition supersedes
 16 original habeas petition) (citing *Forsyth v. Humana, Inc.*, 114 F.3d 1467, 1474 (9th Cir. 1997),
 17 overruled on other grounds by *Lacey v. Maricopa Cty.*, 693 F.3d 896, 928 (9th Cir. 2012)); *see also*
 18 *Ramirez v. Cty. of San Bernardino*, 806 F.3d 1002, 1008 (9th Cir. 2015) (“In other words,
 19 ‘the original pleading no longer performs any function[.]’” (Internal citation omitted.)).

20 However, the Court also notes that it is not clear whether petitioner was aware that his
 21 second petition would completely supersede his first petition. The Court should not simply
 22 ignore petitioner's many arguments related to his conviction that he raised in his first petition,

1 where it is unclear that petitioner was aware that his filing of a second petition in this Court
2 would effectively amount to a waiver of arguments in his first petition that he did not reassert.

3 The Court also notes that petitioner has filed a motion to strike respondent's brief in
4 support of his answer. *See* Dkt. 64. Because the motion to strike addresses briefing related to
5 the amended petition and because the Court is ordering petitioner to file a second amended
6 petition, the motion to strike is moot.

7 Therefore, the Court orders—

8 (1) On or before **April 9, 2021**, petitioner shall file a second amended petition that
9 includes all of his grounds for relief related to his state court conviction for first-degree robbery
10 under Pierce County Superior Court cause number 09-1-04643-5. *See* Dkt. 46-1, at 2. Petitioner
11 shall use the Court's form. His second amended petition will be treated as completely
12 superseding and replacing his other habeas petitions in this matter. Petitioner is cautioned not to
13 incorporate by reference any of his arguments in other documents filed in this cause number, or
14 any other cause number, as the new second amended petition will be a **complete substitute** for
15 the former petitions.

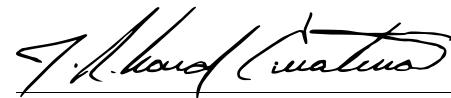
16 (2) Respondent shall file a second amended answer to the second amended petition
17 within **30 days** of petitioner's filing of the second amended petition. Respondent shall not rely
18 on prior briefs filed in this matter and shall respond to petitioner's grounds for relief and
19 arguments in the second amended petition. Respondent may rely on the records of state court
20 proceedings filed previously in this matter, as appropriate.

21 (3) Respondent shall note the second amended answer in accordance with Rule 5 of the
22 Rules Governing Section 2254 Cases in United States District Courts. The second amended
23 answer shall be noted for consideration on the fourth Friday after filing. Petitioner may file and
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1 serve a response not later than the Monday immediately preceding the Friday designated for
2 consideration of the matter, and respondent may file and serve a reply not later than the Friday
3 designated for consideration of the matter. The parties should otherwise refer to the terms of the
4 Court's prior scheduling order (Dkt. 7), except as amended or superseded herein.

5 (4) The Clerk's Office shall strike the noting dates for respondent's answers previously
6 filed (Dkts. 45, 58) and shall update the docket to reflect that petitioner's motion to strike (Dkt.
7 64) is denied as moot. The Clerk's Office shall also provide petitioner with a copy of the Court's
8 form for § 2254 petitions.

9 Dated this 9th day of March, 2021.

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13 J. Richard Creatura
14 United States Magistrate Judge
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